

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
8

9 JAMES NALDER, Guardian Ad Litem
10 For minor Cheyanne Nalder, real party in
interest, and GARY LEWIS, Individually,

11 Plaintiffs,

12 vs.

13 UNITED AUTOMOBILE INSURANCE
14 COMPANY, DOES I through V, and ROE
CORPORATIONS I through V, inclusive,

15 Defendants.
16

Case No. 2:09-cv-1348-RCJ-GWF

ORDER

17 Plaintiffs move to overturn a judgment that this Court issued in this case nearly eight years
18 ago and which the Ninth Circuit affirmed after submitting certified questions to the Nevada
19 Supreme Court. The Court denies this motion for the reasons stated herein.¹

20 **FACTUAL BACKGROUND**

21 In 2007, Plaintiff Gary Lewis was involved in a car accident with Cheyanne Nalder.
22 Plaintiff James Nalder as Cheyanne Nalder's guardian ad litem sued Mr. Lewis for injuries from

23 ¹ Plaintiffs also move to have this case consolidated with another case wherein Defendant is suing
24 Plaintiffs in a matter related to this case. The Court denies this motion as well because this case is
closed and continues to be closed due to this Court's denial of the motion to vacate the judgment.

1 a car accident. Defendant United Automobile Insurance Company (“UAIC”) was Mr. Lewis’s
2 former insurer, but UAIC declined to defend Mr. Lewis, claiming that its coverage had lapsed at
3 the time of the accident. Mr. Nalder’s suit against Mr. Lewis resulted in a default judgment against
4 Mr. Lewis because UAIC had failed to defend him. Subsequently, Mr. Nalder and Mr. Lewis sued
5 UAIC for breaches of its insurance agreement with Mr. Lewis and claiming it did so in bad faith.
6 After an appeal, this Court ultimately determined at summary judgment UAIC had incorrectly
7 determined that its coverage had lapsed but did so in good faith. (ECF No. 102.) Finding that UAIC
8 acted in good faith, the Court found UAIC’s coverage was limited to the policy limits and issued
9 a judgment accordingly on October 30, 2013. (ECF Nos. 102, 103.)

10 Plaintiffs appealed this judgment to the Ninth Circuit, arguing that they were entitled to
11 extracontractual consequential damages from UAIC’s breach of the duty to defend, even if it was
12 in good faith. *Nalder v. United Auto. Ins. Co.*, 824 F.3d 854 (9th Cir. 2016). The Ninth Circuit
13 certified this question of law to the Nevada Supreme Court:

14 Whether, under Nevada law, the liability of an insurer that has breached its duty to
15 defend, but has not acted in bad faith, is capped at the policy limit plus any costs
16 incurred by the insured in mounting a defense, or is the insurer liable for all losses
consequential to the insurer’s breach?

17 *Id.* at 855.

18 During the pendency of the appeal, UAIC moved to dismiss the case for lack of standing
19 because “the six-year life of the default judgment had run and that the judgment had not been
20 renewed, so the judgment is no longer enforceable.” *Nalder v. UAIC*, 878 F.3d 754, 757 (9th Cir.
21 2017). The Ninth Circuit also certified this issue to the Nevada Supreme Court:

22 Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages
23 based on a separate judgment against its insured, does the insurer’s liability expire
24 when the statute of limitations on the judgment runs, notwithstanding that the suit
was filed within the six-year life of the judgment?

1 *Id.* at 755–58. The circuit noted that Plaintiffs must succeed on both questions in order to prevail
2 in its case against UAIC. *Id.* at 758. In 2019, The Nevada Supreme Court ruled in favor of Plaintiffs
3 on the first question but against them on the second, and the Ninth Circuit consequently dismissed
4 the appeal without remand on June 4, 2020. (ECF No. 142.)

5 Plaintiffs now move to nullify this Court’s judgment and reopen this case under Fed. R.
6 Civ. P. 60(b). Plaintiffs claim that the judgment is void under Rule 60(b)(4) because they were not
7 afforded due process. They posit that this Court “*sua sponte* misappl[ied] Nevada law at the
8 hearing, without giving [them] the opportunity to brief the issue and the resulting denial of his
9 right to a jury trial on his claims against UAIC.” (ECF No. 146 at 8.) They also argue that there
10 has been a change in the law since this Court has ruled on summary judgment in 2013. Namely, in
11 2018, the Nevada Supreme Court ruled that “an insurer’s liability for the breach of the duty to
12 defend is not capped at the policy limits, even in the absence of bad faith.” *Century Sur. Co. v.*
13 *Andrew*, 432 P.3d 180, 186 (Nev. 2018). The Nevada Supreme Court relied upon *Century* in
14 addressing the certified questions. (ECF No. 146 Ex. 1 at 2.)

15 ANALYSIS

16 First, Plaintiffs were afforded adequate due process, and their contention to the contrary is
17 frivolous. Rule 60(b)(4) allows that a party may challenge a final judgment on the grounds that it
18 is void. This rule “applies only in the rare instance where a judgment is premised either on a certain
19 type of jurisdictional error or on a violation of due process that deprives a party of notice or the
20 opportunity to be heard.” *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010).
21 In spite of Plaintiffs’ arguments to the contrary, the Court did not act *sua sponte*, depriving them
22 of their opportunity to be heard. For example, in Defendant’s motion for summary judgment, it
23 argued:

24 ///

1 Plaintiffs' claims that they are entitled to \$3.5 million dollar default judgment, far
2 in excess of Mr. Lewis' \$15,000 policy limits, apparently because of Defendant's
3 'bad faith' for their failure to defend under Lewis' policy. However, it seems clear
4 from the discussion above, regarding Defendant's actions on the policy - which was
not in force at the time by plaintiff's admission **no payment was made between
June 12, 2007 and July 10, 2007** - that Plaintiffs' must admit a genuine dispute
exists as to coverage for the loss.

5 (ECF No. 89 at 18). Plaintiffs responded to this motion (ECF No. 96), and the Court held oral
6 arguments on the issue of summary judgment (ECF No. 101). Even more, Plaintiffs were permitted
7 to appeal the Court's order in favor of Defendant to the Ninth Circuit, where Plaintiffs were
8 provided ample opportunity to argue this question before the circuit and the Nevada Supreme
9 Court via the certified questions. While the Nevada Supreme Court may have ultimately disagreed
10 with this Court's finding that Plaintiffs' damages were limited to the policy limits based upon a
11 new case, this error does not render the order void. *In re Ctr. Wholesale, Inc.*, 759 F.2d 1440, 1448
12 (9th Cir.1985) ("A judgment is not void merely because it is erroneous."). In sum, Plaintiffs were
13 provided with ample opportunity to litigate this issue, satisfying due process.

14 Second, Rule 60(b)(6) allows for a party to challenge a final judgment for "any other reason
15 that justifies relief." Among these reasons, the Ninth Circuit has noted that an intervening change
16 in law may qualify for relief in some extraordinary circumstances. *Henson v. Fid. Nat'l Fin., Inc.*,
17 943 F.3d 434, 444 (9th Cir. 2019). The change in law must "change the outcome" of the case. *Riley*
18 *v. Filson*, 933 F.3d 1068, 1072 (9th Cir. 2019). Here, however, the change in law—that Nevada
19 recognizes extracontractual damages even in the absence of bad faith—does not affect the outcome
20 of the underlying case, as the current disposition of the case is dictated by Plaintiff's lack of
21 standing as determined by the Ninth Circuit. (ECF No. 142.)

22 ///

23 ///

24 ///

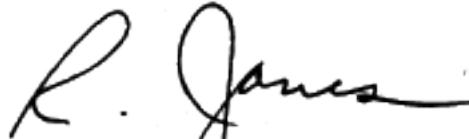
1 **CONCLUSION**

2 IT IS HEREBY ORDERED that Motion to Vacate Judgment (ECF No. 146) is DENIED.

3 IT IS FURTHER ORDERED that Motion to Consolidate (ECF No. 152) is DENIED.

4 IT IS SO ORDERED.

5 Dated July 6, 2021.

6 

7 _____
8 ROBERT C. JONES
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24